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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 506.

THE UNITED STATES, PLAINTIFF IN ERROR,

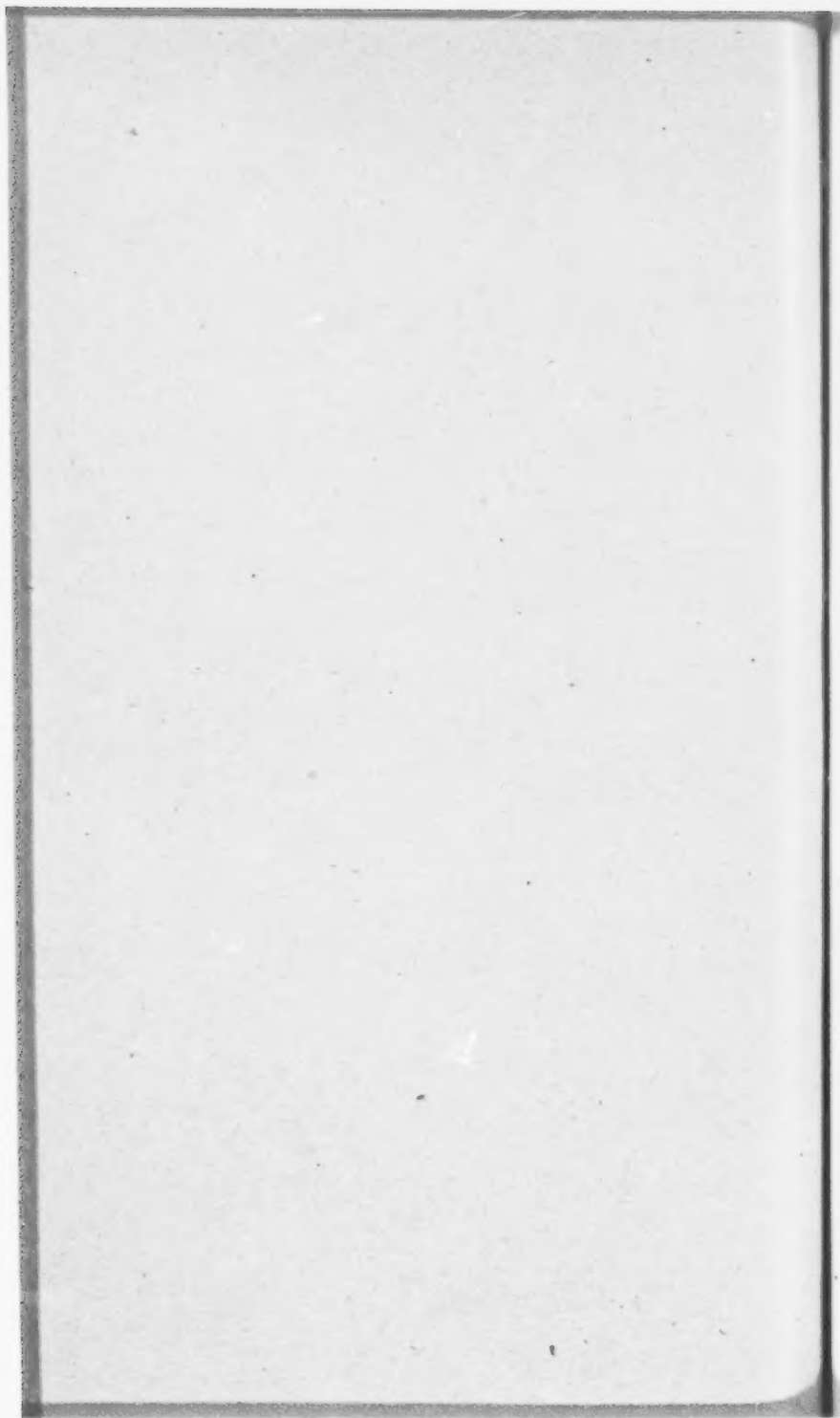
VS.

HERMAN A. SALEN.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 20, 1914.

(24247)



SUPREME COURT OF THE UNITED STATES.

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vs.

HERMAN A. SALEN.

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1

Petition for writ of error.

United States District Court, Southern District of New York.

THE UNITED STATES OF AMERICA, PLAINTIFF,
 plaintiff-in-error,
against

Petition for
 writ of error.

HERMAN A. SALEN, DEFENDANT.

Now comes The United States of America, by its attorney, H. Snowden Marshall, and complains that in the record and proceedings had in this cause, and in the judgment sustaining the defendant's demurrer to the sixth count of the indictment herein and dismissing said sixth count of said indictment, which order and judgment was duly made and filed in the office of the clerk of the United States District Court for the Southern District of New York, on the 30th day of March, 1914, a manifest error has happened, as will appear in the assignment of errors herewith submitted.

Wherefore, The United States of America prays for the allowance of a writ of error, and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated: New York, April 27th, 1914.

H. SNOWDEN MARSHALL,

U. S. Attorney for the Southern District of New York,

Attorney for Petitioner.

(Endorsed) U. S. District Court, S. D. of N. Y. Filed Apr. 28, 1914.

2 The United States of America, ss:

The President of the United States, to the honorable the judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, greeting.

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of the United States for the Southern District of New York, in the Second Circuit, before you or some of you, between The United States of America and Herman A. Salen, a manifest error hath happened, to the great damage of the said United States of America, as by its complaint appears:

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so

that you have the same in the said Supreme Court at Washington, within 30 days of the date hereof; that the record and proceedings aforesaid being accepted, the said Supreme Court may cause further to be done therein to correct that error, what by right and according to the laws and customs of The United States should be done.

3 Witness the Hon. Edward D. White, Chief Justice of the United States, the 28th day of April, in the year of our Lord one thousand nine hundred and fourteen.

ALEX. GILCHRIST, Jr.,

*Clerk U. S. District Court for the
Southern District of New York.*

The foregoing writ is hereby allowed.

C. M. HUGH,

U. S. District Judge for the Southern District of New York.

UNITED STATES OF AMERICA,

Southern District of New York, ss:

I, Alexander Gilchrist, Jr., clerk of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the pages numbered from one to , inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
against

HERMAN A. SALEN, DEFENDANT IN ERROR,

as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the Southern District of New York, in the Second Circuit, this 27th day of May in the year of our Lord one thousand nine hundred and fourteen, and of the independence of the United States the one hundred and thirty-eighth.

[SEAL.]

ALEX. GILCHRIST, Jr., *Clerk.*

(Indorsed:) Due service of a copy of the within is hereby admitted. New York, April 29, 1914. Attys. for defendant. U. S. District Court, S. D. of N. Y. Filed Apr. 29, 1914.

5

Indictment.

District Court of the United States for the Southern District of New York.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City of New York, within and for the District aforesaid, on the

first Tuesday of November, in the year of our Lord one thousand nine hundred and thirteen, and continued by adjournment to and including the first day of December, in the year of our Lord one thousand nine hundred and thirteen.

SOUTHERN DISTRICT OF NEW YORK, 88:

The Jurors of the United States of America, within and for the District aforesaid, on their oath present that Herman A. Salen, defendant, heretofore, to wit, on the 17th day of March, in the year nineteen hundred and thirteen, at the Southern District of New York and within the jurisdiction of this Court, did knowingly and willfully sign, subscribe and declare to a certain "Declaration of Consignee, Importer, or Agent, where merchandise has not been actually purchased", before William F. Mittelsdorf, a Notary Public in and for the County of New York, who then and there had the right and authority under and by virtue of the laws of the United States, and was a competent person, to take said Declaration, and who had been theretofore designated, under Sub-section 5 of Section 28 of the Act of August 5, 1909, by the Secretary of the Treasury to receive such Declaration and to certify to the identity of persons making the same in connection with the entry of imported merchandise at the said Port of New York, and who had theretofore filed with the Collector of Customs of the Port of New York, a copy of his official signature and seal, which said Declaration was of the tenor following to wit:

6 "Declaration of Consignee, Importer or Agent, where merchandise has not been actually purchased."

"I, Herman A. Salen, member of the firm of _____, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the Collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Fr. S. S. "La Provence," whereof _____ is master, from Havre, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time thereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares

and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief Leon Goetz of Paris is (or are) the owner (or owners) of the goods, wares and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges and expenses incident to placing said goods, wares and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty or drawback but such as has been actually allowed on the same.

HERMAN A. SALEN,

PORT OF NEW YORK, *Mar. 17, 1913.*

Personally appeared before me, at the place and time above written, the said Herman A. Salen known to me to be the identical person named and subscribed and made declaration to the foregoing.

Witness my hand and official seal the date above written.

WM. F. MITTELSDORF,
Notary Public.

(In margin:) W. J. Robinson, 320 5th Ave., Ultimate Consignee.

7 that the said Declaration was attached to and made a part of a certain written entry referring to and describing certain imported merchandise, to wit:

One case Cotton Laces not made on lever or gothrough machine, metal thread laces, cotton laces made on lever or gothrough machine marked L. G. No. 610, which had been theretofore, and on the 17th day of March, 1913, imported into the United States at the Port and Collection District of New York, by the said Herman A. Salen from a foreign country, to wit, France, on the Steamship "La Provence"; that annexed to the said written entry and described and referred to therein, and also described and referred to in the said declaration, was a certain certified or consular invoice referring to and describing the merchandise aforesaid; that the said Herman A. Salen, thereafter and on the said 17th day of March, nineteen hundred and thirteen, did present to the Collector of Customs of the Port and Collection District of New York, said declaration, written entry and invoice, which said written entry was designated by the said Collector of Customs by the number 74082 and which said invoice bore the Paris Consular number 7893,

And that the said Herman A. Salen declared in the said Declaration, among other things, in substance and effect, that he did not know or believe in the existence of any other invoice of the said goods, wares and merchandise than the said invoice annexed to the said entry, and that nothing had been on his part, nor to his knowledge, on the part of any other person, concealed or suppressed, whereby the United States might be deprived of any part of the duty lawfully due on the said goods, wares and merchandise;

8 whereas, in truth and in fact at the time of making said Declaration, the said Herman A. Salen did know and believe in the existence of an invoice of the said goods, wares and merchandise other than the said invoice attached to the said entry, and in truth and in fact, there was in existence another invoice of the said goods, wares and merchandise, to wit, an invoice from the said Leon Goetz of Paris, France, to the said W. J. Robinson, of New York City, and whereas, in truth and in fact, at the time of making the said Declaration, the said Herman A. Salen had concealed and suppressed the last mentioned invoice aforesaid from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise, and whereas, in truth and in fact, the said last mentioned invoice from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City had been concealed and suppressed by the said W. J. Robinson to the knowledge of the said Herman A. Salen, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise.

And so the Grand Jurors aforesaid, on their oaths aforesaid, do say that Herman A. Salen, in manner and form aforesaid, and by means aforesaid, on the 17th day of March in the year of our Lord one thousand nine hundred and thirteen, at and in the Southern District of New York and within the jurisdiction of this Court, did knowingly make a false statement in the declaration hereinbefore set forth; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sub-section 6, Section 28, Act of August 5, 1909.)

9

Second count.

And the jurors aforesaid, on their oath aforesaid, do further present that Herman A. Salen, defendant, heretofore, to wit, on the 28th day of January, in the year of our Lord one thousand nine hundred and thirteen, at the Southern District of New York and within the jurisdiction of this Court, did knowingly and wilfully sign, subscribe and declare to a certain "Declaration of Consignee, Importer, or Agent, where merchandise has not been actually purchased," before William F. Mittelsdorf, a Notary Public in and for the County

of New York, who then and there had the right and authority under and by virtue of the laws of the United States, and was a competent person to take said Declaration and who had been theretofore designated under Sub-section 5 of Section 28 of the Act of August 5, 1909, by the Secretary of the Treasury to receive such Declarations, and to certify to the identity of persons making the same in connection with the entry of imported merchandise at the said Port of New York, and who had theretofore filed with the Collector of Customs of the Port of New York a copy of his official signature and seal, which said Declaration was of the tenor following, to wit: "Declaration of Consignee, Importer, or Agent, where merchandise has not been actually purchased.

10 "I, Herman A. Salen, member of the firm of _____, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the Collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Fr. S. S. "La Savoie," whereof _____ is master, from Havre, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time thereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief Leon Goetz of Paris _____ is (or are) the owner (or owners) of the goods, wares and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges and expenses incident to placing said goods, wares and merchandise in condition,

packed ready for shipment to the United States, and no other or different discount, bounty or drawback but such as has been actually allowed on the same.

HERMAN A. SALEN.

PORT OF NEW YORK, *Mar. 17, 1913.*

Personally appeared before me, at the place and time above written, the said Herman A. Salen known to me to be the identical person named and subscribed and made declaration to the foregoing.

Witness my hand and official seal the date above written.

WM. F. MITTELSDORF,

Notary Public.

[Seal. Wm. F. Mittelsdorf, Notary Public, New York County.]

(In margin :) Ultimate Consignee, Wm. J. Robinson, 320 5th Ave., City.

11 that the said Declaration was attached to and made a part of a certain written entry referring to and describing certain imported merchandise, to wit:

One case cotton embroideries, not made on lever or gothrough machine.

One case cotton embroideries, made on lever or gothrough machine, marked L. G. 603, which had been theretofore, and on the 27th day of January, 1913, imported into the United States at the Port and Collection District of New York by the said Herman A. Salen from a foreign country, to wit: France, on the steamship "La Savoie": that annexed to the said written entry and described and referred to therein and also described and referred to in the said declaration, was a certain certified or consular invoice referring to and describing the merchandise aforesaid, that the said Herman A. Salen, thereafter and on the 28th day of January, nineteen hundred and thirteen, did present to the Collector of Customs of the Port and Collection District of New York, said declaration, written entry and invoice, which said written entry was designated by the said Collector of Customs by the Number 25,712 and which said invoice bore the Paris Consular Number 1599.

And that the said Herman A. Salen declared in the said Declaration, among other things, in substance and effect, that he did not know or believe in the existence of any other invoice of the said goods, wares and merchandise than the said invoice annexed to the said entry, and that nothing had been on his part, nor to his knowledge, on the part of any other person, concealed or suppressed, whereby the United States might be deprived of any part of the

12 duty lawfully due on the said goods, wares and merchandise; whereas, in truth and in fact at the time of making said

Declaration, the said Herman A. Salen did know and believe in the existence of an invoice of the said goods, wares and merchandise other than the said invoice attached to the said entry, and, in truth and in fact, there was in existence another invoice of the

said goods, wares and merchandise, to wit, an invoice from the said Leon Goetz of Paris, France, to the said W. J. Robinson, of New York City, and whereas, in truth and in fact, at the time of making the said Declaration, the said Herman A. Salen had concealed and suppressed the last mentioned invoice aforesaid from the said Leon Goetz of Paris, France to the said W. J. Robinson of New York City, whereby the said United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise, and whereas, in truth and in fact, the said last mentioned invoice from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City had been concealed and suppressed by the said W. J. Robinson to the knowledge of the said Herman A. Salen, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise.

And so the Grand Jurors aforesaid, on their oaths aforesaid, do say that Herman A. Salen, in manner and form aforesaid, and by means aforesaid, on the 28th day of January in the year of our Lord one thousand nine hundred and thirteen, at and in the Southern District of New York and within the jurisdiction of this Court, did knowingly make a false statement in the declaration hereinbefore set forth: against the peace of the United States and their dignity and contrary to the form of the statute in such case made and provided. (Sub-section 6, Section 28, Act Aug. 5, 1909.)

13

Third count.

And the jurors aforesaid, on their oaths aforesaid, do further present that Herman A. Salen, defendant, heretofore, to wit, on the 18th day of September, in the year nineteen hundred and eleven, at the Southern District of New York and within the jurisdiction of this Court, did knowingly and wilfully sign, subscribe and declare to a certain "Declaration of Consignee," Importer or Agent, where merchandise has not been actually purchased," before William F. Mittelsdorf, a Notary Public in and for the County of New York, who then and there had the right and authority under and by virtue of the laws of the United States, and was a competent person to take said Declaration, and who had been theretofore designated under Sub-section 5 of Section 28 of the Act of August 5, 1909, by the Secretary of the Treasury to receive such Declarations and to certify to the identity of persons making the same in connection with the entry of imported merchandise at the said Port of New York, and who had theretofore filed with the Collector of Customs of the Port of New York a copy of his official signature and seal, which said Declaration was of the tenor following, to wit:

"Declaration of Consignee, Importer, or Agent, where merchandise has not been actually purchased.

14

"I, Herman A. Salen, member of the firm of _____, do solemnly and truly declare that I am the consignee, importer,

or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the Collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Fr. S. S. "La Lorraine," whereof is master, from Havre, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time thereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief Leon Goetz of Paris is (or are) the owner (or owners) of the goods, wares and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges and expenses incident to placing said goods, wares and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty or drawback but such as has been actually allowed on the same.

HERMAN A. SALEN.

PORT OF NEW YORK, *Sept. 18, 1911.*

Personally appeared before me, at the place and time above written, the said Herman A. Salen known to me to be the identical person named and subscribed and made declaration to the foregoing.

Witness my hand and official seal the date above written.

WM. F. MITTELSDORF,

Notary Public.

[Seal Wm. F. Mittelsdorf, Notary Public, New York County.]

15 that the said Declaration was attached to and made a part of a certain written entry referring to and describing certain imported merchandise, to wit:

One case cotton embroideries, metal laces, marked L. G. Number 576.

which had been theretofore and on the 16th day of September, nineteen hundred and eleven, imported into the United States at the Port and Collection District of New York, by the said Herman A. Salen, from a foreign country, to wit: France, on the steamship "La Lorraine," that annexed to the said written entry and described and referred to therein and also described and referred to in the said declaration was a certain certified or consular invoice referring to and describing the merchandise aforesaid, that the said Herman A. Salen, thereafter and on the 18th day of September, nineteen hundred and eleven, did present to the Collector of Customs of the Port and Collection District of New York, said declaration, written entry and invoice, which said written entry was designated by the said Collector of Customs by the Number 233,925 and which said invoice bore the Paris consular number 23,125.

And that the said Herman A. Salen declared in the said Declaration, among other things, in substance and effect that he did not know or believe in the existence of any other invoice of the said goods, wares and merchandise than the said invoice annexed to the said entry, and that nothing had been on his part, nor to his knowledge, on the part of any other person, concealed or suppressed, whereby the United States might be deprived of any part of the duty lawfully due on the said goods, wares and merchandise; whereas, in truth and in fact at the time of making said Declaration, the

16 said Herman A. Salen did know and believe in the existence of an invoice of the said goods, wares and merchandise other than the said invoice attached to the said entry, and, in truth and in fact, there was in existence another invoice of the said goods, wares and merchandise, to wit: an invoice from the said Leon Goetz, of Paris, France, to the said W. J. Robinson, of New York City, and whereas, in truth and in fact, at the time of making the said Declaration, the said Herman A. Salen had concealed and suppressed the last mentioned invoice aforesaid from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise, and whereas in truth and in fact, the said last mentioned invoice from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City had been concealed and suppressed by the said W. J. Robinson to the knowledge of the said Herman A. Salen, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise.

And so the Grand Jurors aforesaid, on their oaths aforesaid, do say that Herman A. Salen, in manner and form aforesaid, and by

means aforesaid, on the 18th day of September, in the year of our Lord one thousand nine hundred and eleven, at and in the Southern District of New York and within the jurisdiction of this Court, did knowingly make a false statement in the declaration hereinbefore set forth; against the peace of the United States and their dignity and contrary to the form of the statute in such case made and provided. (Sub-sections 6, Section 28, Act Aug. 5, 1909.)

17

Fourth count.

And the jurors aforesaid, on their oath aforesaid, do further present that Herman A. Salen, defendant, heretofore, to wit, on the 1st day of February, in the year nineteen hundred and ten, at the Southern District of New York and within the jurisdiction of this Court, did knowingly and wilfully sign, subscribe and declare to a certain "Declaration of Consignee, Importer, or Agent, where merchandise has not been actually purchased," before William F. Mittelsdorf, a Notary Public in and for the County of New York, who then and there had the right and authority under and by virtue of the laws of the United States, and was a competent person to take said Declaration, and who had been theretofore designated under Sub-section 5 of Section 28 of the Act of August 5, 1909, by the Secretary of the Treasury to receive such Declarations and to certify to the identity of persons making the same in connection with the entry of imported merchandise at the said Port of New York, and who had theretofore filed with the Collector of Customs of the Port of New York a copy of his official signature and seal, which said Declaration was of the tenor following, to wit:

"Declaration of Consignee, Importer, or Agent, where merchandise has not been actually purchased.

18 "I, Herman A. Salen, member of the firm of _____, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the Collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Fr. S. S. "La Bretagne" whereof _____ is master, from Havre, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares and merchandise; that the said invoice and the declaration therein are

in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time thereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief Leon Goetz of Paris is (or are) the owner (or owners) of the goods, wares and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges and expenses incident to placing said goods, wares and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty or drawback but such as has been actually allowed on the same.

HERMAN A. SALEN.

PORT OF NEW YORK, *Feb. 1, 1910.*

Personally appeared before me, at the place and time above written, the said Herman A. Salen known to me to be the identical person named and subscribed and made declaration to the foregoing.

Witness my hand and official seal the date above written.

WM. F. MITTELSDOFF,

Notary Public.

[Seal Wm. F. Mittelsdorf, Notary Public, New York County.]

(In margin:) Ultimate Consignee, W. J. Robinson, 320 5th Ave., City.

19 that the said Declaration was attached to and made a part of a certain written entry referring to and describing certain imported merchandise, to wit:

One case Cotton Embroideries, metal embroideries, marked L. G. No. 540,

which had been theretofore, and on the 31st day of January, nineteen hundred and ten, imported into the United States at the Port and Collection District of New York by the said Herman A. Salen, from a foreign country, to wit: France, on the Steamship "La Bretagne"; that annexed to the said written entry and described and referred to therein and also described and referred to in the said declaration, was a certain certified or consular invoice referring to and describing the merchandise aforesaid; that the said Herman A. Salen, thereafter and on the 1st day of February, nineteen hundred and ten, did present to the Collector of Customs of the Port and Collection District of New York, said declaration, written

entry and invoice, which said written entry was designated by the said Collector of Customs by the number 28607 and which said invoice bore the Paris Consular number 1889.

And that the said Herman A. Salen declared in the said Declaration, among other things, in substance and effect, that he did not know or believe in the existence of any other invoice of the said goods, wares and merchandise than the said invoice annexed to the said entry, and that nothing had been on his part, nor to his knowledge, on the part of any other person, concealed or suppressed, whereby the United States might be deprived of any part of the duty lawfully due on the said goods, wares and merchandise; whereas, in truth and in fact at the time of making said Declaration, the said Herman A. Salen did know and believe in the
20 existence of an invoice of the said goods, wares and merchandise other than the said invoice attached to the said entry, and, in truth and in fact, there was in existence another invoice of the said goods, wares and merchandise, to wit: an invoice from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City, and whereas, in truth and in fact, at the time of making the said Declaration, the said Herman A. Salen had concealed and suppressed the last mentioned invoice aforesaid from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise, and whereas in truth and in fact, the said last mentioned invoice from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City had been concealed and suppressed by the said W. J. Robinson to the knowledge of the said Herman A. Salen, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise.

And so the Grand Jurors aforesaid, on their oaths aforesaid, do say that Herman A. Salen, in manner and form aforesaid, and by means aforesaid, on the 1st day of February, in the year of our Lord one thousand nine hundred and ten, at and in the Southern District of New York and within the jurisdiction of this Court, did knowingly make a false statement in the declaration hereinbefore set forth: against the peace of the United States and their dignity and contrary to the form of the statute in such case made and provided. (Sub-section 6, Section 28, Act of August 5, 1909.)

21

Fifth count.

And the jurors aforesaid, on their oath aforesaid, do further present that Herman A. Salen, defendant, heretofore, to wit, on the 14th day of February, in the year nineteen hundred and ten, at the Southern District of New York and within the jurisdiction of this Court, did knowingly, wilfully sign, subscribe and declare to a certain "Declaration of Consignee, Importer, or Agent, where merchandise

has not been actually purchased," before William F. Mittelsdorf, a Notary Public in and for the County of New York, who then and there had the right and authority under and by virtue of the laws of the United States, and was a competent person, to take said Declaration, and who had been theretofore designated, under Sub-section 5 of Section 28 of the Act of August 5, 1909, by the Secretary of the Treasury to receive such Declaration and to certify to the identity of persons making the same in connection with the entry of imported merchandise at the said Port of New York, and who had theretofore filed with the Collector of Customs of the Port of New York a copy of his official signature and seal, which said Declaration was of the tenor following, to wit:

"Declaration of Consignee, Importer, or Agent, where merchandise has not been actually purchased.

22 "I, Herman A. Salen, member of the firm of _____, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the Collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported on the Fr. S. S. "La Provence" whereof _____ is master, from Havre, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time thereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief Leon Goetz of Paris _____ is (or are) the owner (or owners) of the goods, wares and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject

to duty under any paragraph of the tariff Act, and all other costs, charges and expenses incident to placing said goods, wares and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty or drawback but such as has been actually allowed on the same.

HERMAN A. SALEN.

PORT OF NEW YORK, *Feb. 14, 1910.*

Personally appeared before me, at the place and time above written, the said Herman A. Salen known to me to be the identical person named and subscribed and made declaration to the foregoing.

Witness my hand and official seal the date above written.

WM. F. MITTELSDORF,

Notary Public.

[Seal Wm. F. Mittelsdorf, Notary Public, New York County.]

(In margin:) W. J. Robinson, 320 5th Ave., Ultimate Consignee.

23 that the said Declaration was attached to and made a part of a certain written entry referring to and describing certain imported merchandise, to wit:

One case Cotton Laces, metal embroideries, bleached cottons, marked L. G. 541, which had been theretofore and on the 14th day of February, nineteen hundred and ten, imported into the United States at the Port and Collection District of New York, by the said Herman A. Salen, from a foreign country, to wit: France, on the Steamship "La Provence"; that annexed to the said written entry and described and referred to therein, and also described and referred to in the said declaration, was a certain certified or consular invoice referring to and describing the merchandise aforesaid; that the said Herman A. Salen, thereafter and on the said 14th day of February, nineteen hundred and ten, did present to the Collector of Customs of the Port and Collection District of New York, said declaration, written entry and invoice, which said written entry was designated by the said Collector of Customs by the number 39738 and which said invoice bore the Paris Consular number 3313.

And that the said Herman A. Salen declared in the said Declaration, among other things, in substance and effect, that he did not know or believe in the existence of any other invoice of the said goods, wares and merchandise than the said invoice annexed to the said entry, and that nothing had been on his part, nor to his knowledge, on the part of any other person, concealed or suppressed, whereby the United States might be deprived of any part of the duty lawfully due on the said goods, wares and merchandise;

whereas, in truth and in fact at the time of making said
24 Declaration, the said Herman A. Salen did know and believe in the existence of an invoice of the said goods, wares and merchandise other than the said invoice attached to the said entry, and, in truth and in fact, there was in existence another invoice of the said goods, wares and merchandise, to wit, an invoice from the

said Leon Goetz of Paris, France, to the said W. J. Robinson, of New York City, and whereas, in truth and in fact, at the time of making the said Declaration, the said Herman A. Salen had concealed and suppressed the last mentioned invoice aforesaid from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise, and whereas, in truth and in fact, the said last mentioned invoice from the said Leon Goetz of Paris, France, to the said W. J. Robinson of New York City had been concealed and suppressed by the said W. J. Robinson to the knowledge of the said Herman A. Salen, whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise.

And so the Grand Jurors aforesaid, on their oaths aforesaid, do say that Herman A. Salen, in manner and form aforesaid, and by means aforesaid, on the 14th day of February, in the year of our Lord one thousand nine hundred and ten, at and in the Southern District of New York and within the jurisdiction of this Court, did knowingly make a false statement in the declaration hereinbefore set forth; against the peace of the United States and their dignity and contrary to the form of the Statute in such case made and provided. (Sub-section 6, Section 28, Act of August 5, 1909.)

25

Sixth count.

And the jurors aforesaid, on their oath aforesaid, do further present that Herman A. Salen, defendant, heretofore, to wit, on the 17th day of March, in the year of our Lord one thousand nine hundred and thirteen, at the Southern District of New York and within the jurisdiction of this Court, did knowingly and wilfully sign, subscribe and declare to a certain "Declaration of Consignee, Importer, or Agent, where merchandise has not been actually purchased," before William F. Mittelsdorf, a Notary Public in and for the County of New York, who then and there had the right and authority under and by virtue of the laws of the United States, and was a competent person to take said Declaration and who had been theretofore designated under Sub-section 5 of Section 28 of the Act of August 5, 1909, by the Secretary of the Treasury to receive such Declaration, and to certify to the identity of persons making the same in connection with the entry of imported merchandise at the said Port of New York, and who had theretofore filed with the Collector of Customs of the Port of New York a copy of his official signature and seal,

which said Declaration was of the tenor following, to wit:

26 "I, Herman A. Salen, member of the firm of _____, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the

Collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Fr. S. S. "La Provence," whereof is master, from Havre, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time thereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief Leon Goetz of Paris is (or are) the owner (or owners) of the goods, wares and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff Act, and all other costs, charges and expenses incident to placing said goods, wares and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty or drawback but such as has been actually allowed on the same.

HERMAN A. SALEN.

PORT OF NEW YORK, *Mar. 17, 1913.*

Personally appeared before me, at the place and time above written, the said Herman A. Salen known to me to be the identical person named and subscribed and made declaration to the foregoing.

Witness my hand and official seal the date above written.

WM. F. MITTELSDORF,

Notary Public.

[Seal Wm. F. Mittelsdorf, Notary Public, New York County.]

(In margin :) W. J. Robinson, 320 5th Ave., ultimate consignee.

27 that the said Declaration was attached to and made a part of a certain written entry referring to and describing certain imported merchandise, to wit:

One Case Cotton Laces, not made on lever or gothorough machine, metal thread laces, cotton laces made on lever or gothorough machine, marked L. G. No. 610, which had been theretofore, and on the 17th day of March, 1913, imported into the United States at the Port and Collection District of New York, by the said Herman A. Salen from a foreign country, to wit: France, on the steamship "La Provence"; that annexed to the said written entry and described and referred to therein, and also described and referred to in the said declaration, was a certain certified or consular invoice referring to and describing the merchandise aforesaid; that the said Herman A. Salen, thereafter and on the said 17th day of March, nineteen hundred and thirteen, did present to the Collector of Customs of the Port and Collection District of New York, said declaration, written entry and invoice, which said written entry was designated by the said Collector of Customs by the number 74082 and which said invoice bore the Paris Consular number 7893.

And that the said Herman A. Salen declared in the said declaration, among other things, in substance and effect, that nothing had been on his part, or to his knowledge, on the part of any other person, concealed or suppressed whereby the United States might be defrauded of any part of the duty lawfully due on the said merchandise, which said declaration and statement was then and there false to the knowledge of the said Herman A. Salen in this, to wit: That

28 the said Herman A. Salen then and there well knew and believed that from time to time during a period of eight years theretofore, the said Leon Goetz had been exporting from France to him, the said Herman A. Salen, at the Port of New York, merchandise of a similar character to that covered by the said entry and invoice, which merchandise was intended for delivery to and was actually delivered after importation to the said William J. Robinson, the ultimate consignee thereof, and that each such shipment had been accompanied by a consular invoice in all respects similar to the said invoice number 7893, in which said consular invoice the alleged foreign market values of the said merchandise were then and there stated, and that in each such consular invoice, as the said Herman A. Salen well knew and then and there believed, values had been placed upon said merchandise that were uniformly greatly below the prices at which the said merchandise, to the knowledge of the said Herman A. Salen, had been, or was to have been, sold in the United States; that the said Herman A. Salen had acquired knowledge from the said large and uniform differences between the alleged foreign market values stated in the said consular invoices and the prices at which the said merchandise was sold in the United States, and from the fact, which he the said Herman A. Salen then and there well knew and believes, that purchasers in the United States were conversant with the foreign market values of said mer-

chandise, that the said consular invoices were false and fraudulent and uniformly understated the foreign market values of the said merchandise, so imported as aforesaid; and the said Herman A. Salen at the time of making the declaration aforesaid well knew and believed that the shipment of merchandise, as to which the said declaration was made, was one of the aforesaid series of

29 shipments as to which, as the said Herman A. Salen then and there well knew and believed, the alleged foreign market values stated in the consular invoices thereof had been uniformly greatly below the prices at which the said merchandise was sold in the United States; and the said Herman A. Salen then and there well knew and believed that, as to the merchandise referred to in the said declaration and as to all the series of previous shipments of merchandise of which said shipment referred to in said declaration formed a part, there was concealed and suppressed on the part of the said Herman A. Salen and on the part of the said Leon Goetz and on the part of the said William J. Robinson a great and uniform discrepancy between the values of the said merchandise, as stated in the consular invoices, thereof, and the prices at which the merchandise was sold in the United States; and the said Herman A. Salen well knew and believed that, during the entire said period of eight years, in the course of all exportations of merchandise from the said Leon Goetz to him, the said Herman A. Salen, of a similar character to that covered by the aforesaid entry and invoice, after he had made entry of each importation at the Custom House, he, the said Herman A. Salen, had received from the said William J. Robinson a list or statement covering the same merchandise as he had theretofore entered at the Custom House, in which list or statement was set forth the prices at which the said merchandise had been sold in the United States by the said William J. Robinson or by the said Leon Goetz, which prices, as the said Herman A. Salen then and there well knew and believed, were vastly in excess of the values stated in the consular invoices covering the same merchandise, upon which

30 invoices the said merchandise had been entered at the Custom House at the Port of New York, even after making due and proper allowance for the duties, freight, insurance, commissions, and all other charges on the said merchandise and for a reasonable profit to the said Leon Goetz. And as to the merchandise covered by the said declaration the said Herman A. Salen at the time of making oath to the said declaration well knew and believed that he would also receive in similar manner a list or statement of the prices at which the merchandise referred to in said declaration had been or would be sold in the United States by the said William J. Robinson or by the said Leon Goetz, which said list or statement, as the said Herman A. Salen then and there well knew and believed, would show prices so greatly in excess of the alleged foreign market values stated in the invoice referred to in the said declaration, even after making due and proper allowance for duty, freight, insurance, commissions and all other charges, and for a reasonable profit to the

said Leon Goetz, that the said Collector should and would acquire knowledge, if the said list or statement were delivered to him, that the alleged foreign market values stated in the said invoice were false and fraudulent; and the said Herman A. Salen then and there well knew and believed, if the Collector of the Port of New York had been informed of said facts so suppressed and concealed, that the Collector would not have accepted the said values stated in the said invoice, as the true foreign market values of the said merchandise, but would have instituted inquiry as to the correctness of said alleged market values as stated in said consular invoice and would have applied for a reappraisement thereof, and that, if said inquiry had been made and reappraisement applied for, the said Collector would have

31 ascertained that in the said consular invoices the foreign market values of said merchandise had been falsely and fraudulently understated; and the said Herman A. Salen, with such knowledge, as aforesaid, wilfully and knowingly in the said declaration suppressed and concealed said facts from the said Collector for the purpose and intent of preventing such inquiry into the correctness of the said invoice and entry and such reappraisement of the merchandise covered thereby; whereby the United States might have been defrauded of a part of the duty lawfully due on the said goods, wares and merchandise.

And so the Grand Jurors aforesaid, on their oaths aforesaid, do say that Herman A. Salen, in manner and form aforesaid, and by means aforesaid, on the 17th day of March, in the year of our Lord one thousand nine hundred and thirteen, at and in the Southern District of New York and within the jurisdiction of this Court, did knowingly make a false statement in the declaration hereinbefore set forth; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided, (Sub-section 6, Section 28, Act of August 5, 1909.)

H. SNOWDEN MARSHALL,

United States Attorney.

(Endorsed:) U. S. District Court.—The United States of America vs. Herman A. Salen.—Indictment. Undervaluation of imported merchandise.—Sub-section 6, section 28, Act of August 5, 1909. H. Snowden Marshall, U. S. Attorney.—A true bill. Edward Powers, Foreman.—U. S. District Court, S. D. of N. Y. Filed Dec. 1, 1913.

32 1913, Dec. 6. Pleads not guilty. Bail \$10,000. January Term 1914, to withdraw. Grubb, J.
Dec. 31. Plea of n. g. withdrawn.
Dec. 31. Filed demurrer.
1914, Feb. 26. Demurrer argued.
Mch. 2. Demurrer overruled as to counts 1, 2, 3, 4, and 5. Demurrer sustained as to count 6.

In the United States District Court, for the Southern District of
New York.

UNITED STATES OF AMERICA,	} Indictment No. 2342, Violation of Sub-
<i>v.s.</i>	
HERMAN A. SALEN.	section 6 of Section 28 of Act of Congress of August 5th, 1909. Filed Dec. 1st, 1913.

Demurrer to 1st count.

And now comes the defendant, Herman A. Salen, and for demurrer to the First count of said indictment avers and says:

That the said count of said indictment is in all respects and things insufficient in law to require this defendant to further plead or answer thereto in this:—

First. That it fails to allege or aver any facts sufficient to constitute an offense under the provisions of subsection 6 of section 28 of the act of Congress of August 5th, 1909, or any other statute of the United States.

And for specification of further grounds of insufficiency this defendant avers and says:

Second. That said count of said indictment is insufficient to charge an offense in that it fails to set out a necessary element to constitute the offense made criminal by subsection 6 of the act of August 5, 1909, in this that there is no allegation in said count that the "other invoice" of which the defendant is charged to have had knowl-
34 edge at the time it is charged he stated that he knew of no "other invoice" than the one presented to the collector, was an invoice of a kind material to the said declaration, or an invoice within the purview of the statute requiring said declaration, and that no facts are charged in said count from which it may be determined by the Court that such "other invoice" referred to in said count was material to the declaration or entry.

Third. That the said count fails to set out said "other invoice" mentioned therein in words or figures, or by tenor and effect, or give the date thereof or any description of the same in substance or purport so that this defendant would be put on notice of the particular paper and document, a knowledge of which it is intended to prove against him and so that the court may determine its materiality and whether it be an invoice within the purview of the statute, and so that this defendant on conviction or acquittal may plead such judgment in bar to any further prosecution.

Fourth. That said count in so far as it undertakes to specify the particulars in which this defendant's statement in the declaration that he knew of nothing concealed or suppressed was false, by charging that this defendant had concealed and suppressed an invoice from Leon Goetz of Paris, France, to W. J. Robinson of New York

City; fails to give any description in words, figures, substance or purport of said invoice, and does not charge that this defendant knowingly concealed and suppressed the same, and does not charge that the invoice referred to as from Goetz to Robinson was the invoice referred to previously in said count of the indictment
35 as the "other invoice" of the existence of which this defendant had knowledge.

Fifth. That said count fails to charge and state from what officer, when, where and in what proceeding or in what document or communication in which this defendant was under legal or moral obligation to disclose the fact, this defendant had concealed and suppressed the alleged invoice from said Goetz to said Robinson, and fails to set out the circumstances under which there was any legal duty or moral obligation imposed upon this defendant to disclose the existence of said alleged invoice, and does not charge that the said invoice was or ever was in the possession, power or control of this defendant, so that he could have disclosed the same to any officer of the Government, and said count fails to charge in words, substance or effect that this defendant ever had any such knowledge of the contents, purport or effect of said alleged invoice from Goetz to Robinson as would put him, said defendant, upon notice that it was his duty, legal or moral, to disclose the fact of the existence of any such alleged invoice to any officer of the Government.

Sixth That said count, in so far as it charges that this defendant at the time of making said declaration had knowledge that the said W. J. Robinson had concealed and suppressed an invoice from the said Leon Goetz, of Paris, France, to said W. J. Robinson, of New York City, as being a fact controverting the truth of defendant's statement in said declaration that he knew of nothing concealed or suppressed on the part of any other person whereby the United
36 States may be defrauded,—the said averment is wholly insufficient in law to charge a false statement in this that it fails

to state that said concealment by Robinson was before any officer, or in any proceeding in which Robinson was bound to speak, or what were the circumstances under which the said Robinson had suppressed or concealed the existence of said invoice, or give such description of such invoice by words, substance or effect as to show its materiality, and fails to charge that the said Robinson had any such connection either with the certification of the consular invoice before the American consul in France or the entry of the merchandise in New York as imposed a legal duty or moral obligation on Robinson to disclose the existence of said alleged invoice, so as to constitute a suppression by "any other person" within the meaning of the statute.

Seventh. That in so far as said count charges concealment and suppression of any alleged invoice on the part of this defendant or within his knowledge on the part of any other person, it does not charge by proper innuendos and averments that such invoice alleged to have been concealed and suppressed was of such a character that

its concealment and suppression was in fact or could be used as a device or was intended as a device, or could be effective, as a means by which the United States may be defrauded or was otherwise material. Failure to disclose knowledge of another invoice is not in contemplation of the suppression clause of the declaration.

Eighth. That the averments of said count are so uncertain, ambiguous and indefinite as not to sufficiently put this defendant on notice of the specific facts constituting the crime with which he is charged, or enable him on conviction or acquittal to plead such judgment in bar to any further prosecution.

37 Wherefore, this defendant prays the judgment of this court for each and every of the foregoing grounds, that the said first count of said indictment be quashed.

Demurrer to 2nd count.

And the said defendant, Herman A. Salen, for demurrer to the second count of the said indictment avers and says:

That the said count of said indictment is in all respects and things insufficient in law to require this defendant to further plead or answer thereto in this, to wit:

On each of the grounds of demurrer specified as first to eighth, inclusive, in the foregoing demurrer to the first count of this indictment as if the same were here repeated and incorporated.

Wherefore, this defendant prays the judgment of this court for each and every of the foregoing grounds, that the said second count of said indictment be quashed.

Demurrer to 3rd count.

And the said defendant, Herman A. Salen, for demurrer to the third count of the said indictment avers and says:

That the said count of said indictment is in all respects and things insufficient in law to require this defendant to further plead or answer thereto in this, to wit:

38 On each of the grounds of demurrer specified as first to eighth, inclusive, in the foregoing demurrer to the first count of this indictment as if the same were here repeated and incorporated.

Wherefore, this defendant prays the judgment of this court for each and every of the foregoing grounds, that the said third count of said indictment be quashed.

Demurrer to 4th count.

And the said defendant, Herman A. Salen, for demurrer to the fourth count of the said indictment avers and says:

That the said count of said indictment is in all respects and things insufficient in law to require this defendant to further plead or answer thereto in this, to wit:

On each of the grounds of demurrer specified as first to eighth, inclusive, in the foregoing demurrer to the first count of this indictment as if the same were here repeated and incorporated.

Wherefore, this defendant prays the judgment of this court for each and every of the foregoing grounds, that the said fourth count of said indictment be quashed.

Demurrer to 5th count.

And the said defendant, Herman A. Salen, for demurrer to the fifth count of the said indictment avers and says:

That the said count of said indictment is in all respects and things insufficient in law to require this defendant to further plead
39 or answer thereto in this, to wit:

On each of the grounds of demurrer specified as first to eighth inclusive, in the foregoing demurrer to the first count of this indictment as if the same were here repeated and incorporated.

Wherefore, this defendant prays the judgment of this court for each and every of the foregoing grounds, that the fifth count of said indictment be quashed.

Demurrer to 6th count.

And the said defendant, Herman A. Salen, for demurrer to the sixth count of the said indictment avers and says:

That the said count of said indictment is in all respects and things insufficient in law to require this defendant to further plead or answer thereto in this:

First. That it fails to allege or aver any facts sufficient to constitute an offense under the provisions of sub-section 6 of section 28 of the act of Congress of August 5, 1909, or any other statute of the United States.

And for specifications of further grounds of insufficiency this defendant avers and says:

Second. That in so far as said count charges that defendant stated falsely in his said declaration that nothing had been concealed or suppressed on his part nor to his knowledge on the part of any other person, and undertakes to specify the falsity as consisting of suppression of facts recited relating to previous importations
40 or alleged wrongdoings therein, the said count is insufficient in law to charge any offense, in this:

(a) That the facts set out are not facts which the defendant was under any legal or moral obligation to disclose.

And in this:

(b) That it fails to set out the circumstances from which it may be legally inferred that there was any legal or moral obligation on the defendant to disclose the said facts so set out.

(c) That the facts so set out are not averments of facts from which it may be legally inferred therefrom that failure to disclose them was

concealment and suppression of facts by which the United States may be defrauded within the meaning of the declaration prescribed by the statute.

(d) That it is not charged therein positively that there was any undervaluation of the merchandise charged to have been imported by said defendant in the previous importations referred to therein.

(e) That it is not charged therein positively that said defendant had any knowledge that the merchandise referred to in said previous importations were undervalued, and only charges argumentatively and inferentially that he knew it from having a knowledge of facts recited which do not raise the legal conclusion that there was any undervaluation in such previous consular invoices.

Third. That in so far as said count undertakes to charge that the prices at which the particular merchandise covered by the declaration of March 17, 1913, was sold in the United States was much greater than the price stated in the consular invoice presented

41 to the collector with said declaration, which gave the foreign market values, and that defendant had concealed and suppressed that knowledge whereby the United States might be defrauded, said count is insufficient to charge a crime, for the same reasons as applied to the importation of March 17, 1913, as are stated in clause (a), (b), (c), (d) above as applied to said previous importations, and it is not charged that the defendant had any knowledge or belief that the merchandise covered by said importation of May 17, 1913, was undervalued in said invoice presented to the collector therewith.

Fourth. That the averment in said count that said defendant knew and believed "as to the merchandise referred to in said declaration and as well to all the series of previous shipments" there was concealed and suppressed a great and uniform discrepancy between the values of the said merchandise as stated in the consular invoices thereof and the prices at which the merchandise "was sold in the United States" is a positive averment that the particular merchandise referred to in the declaration had been already sold in the United States at the time defendant made the declaration, and that the defendant knew of that fact and knew of the discrepancy between the price at which it had been sold and the prices stated in the consular invoice. And that said averment is repugnant to the following further averment of said count "and as to the merchandise covered by said declaration, the said Herman A. Salen at the time of making oath to the said declaration well knew and believed that he would also receive in similar manner a list or statement of the prices

42 at which the merchandise referred to in said declaration had been or would be sold in the United States by the said William J. Robinson or by the said Leon Goetz, which said list or statement, as the said Herman A. Salen then and there well knew and believed, would show prices so greatly in excess of the alleged foreign market values etc." It being impossible for defendant to have a knowledge and belief that the said identical mer-

chandise referred to in said declaration would thereafter be so sold in the United States if he knew and believed that it had already been so sold and actually knew of the existence of the said alleged discrepancies. Said repugnancy rendering uncertain and indefinite what knowledge or belief the defendant did have, the concealment or suppression of which it is intended to charge.

Fifth. That the averments in said count as follows:

"And as to the merchandise covered by the said declaration (meaning the declaration of March 17, 1913), the said Herman A. Salen at the time of making the oath to the said declaration well knew and believed that he would also receive in similar manner a statement of the prices at which the merchandise referred to in said declaration had been or would be sold in the United States by the said W. J. Robinson or by the said Leon Goetz, and which said list or statement, as the said Herman A. Salen then and there knew and believed would show prices so greatly in excess of the alleged market values, etc.," and further charging in effect the concealment and suppression by defendant of his belief in the above matters and that the disclosure at the time of the declaration of said matters to the collector might have thereafter caused a reappraisement and
43 higher valuation were not charges of concealment or suppression of any past or existing fact which could amount to representation or concealment or suppression of anything by which the United States may be defrauded within the meaning of the suppression clause of the statute.

Sixth. That there is no averment in said count that the things alleged to have been concealed or suppressed were material to the declaration or to the purposes thereof, and no facts are averred in said count in regard to the things suppressed from which such materiality of the things concealed or suppressed are made to appear.

Seventh. That the averments of said count are so uncertain, ambiguous and indefinite as not to sufficiently put this defendant on notice of the specific facts constituting the crime with which he is charged, or to enable him on conviction or acquittal to plead such judgment in bar to any further prosecution.

Wherefore, this defendant prays the judgment of this court for each and every of the foregoing grounds, that the sixth count of said indictment be quashed.

ERWIN, FRIED & CZAKI,
Attorneys for Defendant.

MARION ERWIN,
Of Counsel.

(Endorsed:) A copy of the within paper has been this day received at this office. Dec. 31, 1913. H. Snowden Marshall.—U. S. District Court, S. D. of N. Y. Filed Dec. 31, 1913.

44

Notice of withdrawal of plea.

In the United States District Court for the Southern District of
New York.

UNITED STATES	}	Indictment No. 2342, Violation of sub-section 6 of section 28 of act of Congress of August 5, 1909. Filed Dec. 1, 1913.
<i>vs.</i>		
HERMAN A. SALEN.		

And now comes the defendant, Herman A. Salen, by Erwin, Fried & Czaki, his attorneys, and in pursuance of leave heretofore granted by the court, hereby withdraws his plea of not guilty heretofore entered to the above indictment and files in lieu thereof his demurrers to the whole and several counts thereof.

ERWIN, FRIED & CZAKI,
Attorneys for Defendant.

December 30, 1913.

(Endorsed :) A copy of the within paper has been this day received at this office. Dec. 31, 1913. H. Snowden Marshall, U. S. Attorney.—
U. S. District Court, S. D. of N. Y. Filed Jan. 2, 1914.

45	UNITED STATES	}	Indictment No. 2342.
	<i>v.</i>		
	HERMAN A. SALEN.		

Memorandum of demurrer.

All arguments based on a similarity between this proceeding and indictments for perjury I repudiate. One of the methods of clogging courts with antiquated procedure is to carry over into purely statutory matters the niceties of the common law because of a similarity in the subjects treated.

This crime is purely statutory, and indictments therefor are subject to the rules laid down in *U. S. v. Carll*, and *U. S. v. Hess*, concerning which I have expressed my views very often before now.

These rules (I believe) leave much to the discretion of the lower court—a discretion guided principally by a wish to inform the defendant fairly of what he has to meet, and then make him meet it as soon as possible.

The first five counts assert that Salen falsely swore there was no other invoice, when he knew there was. This is plain enough, for he knows better what he knew than anyone else can. Usually this would dispose of the matter, for any further statement by the prosecution would be merely a statement of evidence—to which the best objection is, that the defendant ought not to be informed of the evidence against him, because of the danger of fabrication of evidence *contra*.

Where (as here) the vital evidence is a piece of paper, no danger to justice exists in showing it, and if defendant thinks that if exhibited, it would appear not be an invoice—in such wise that
 46 the court would have to so hold as matter of law—that point ought to be presented in advance of trial. To do so saves time and expense.

Therefore a motion for B/P will be entertained, but the demurrer is overruled as to counts 1 to 5 inc.

The 6th count is only useful if the following be true, viz, that there never was another invoice to the consignment specified, but that Salen knew of so long a course of fraud on the customs carried on by Goetz & Robinson that from such customary fraud he was bound to assume the entry specified to be also a fraud, and tell the collector of his belief.

This may be more shortly stated thus—failing to use knowledge of 25 successive fraudulent entries makes the 26th failure a crime.

If all the facts stated in the 6th count were shown I can not think it my duty to send them to a jury, and therefore the demurrer is sustained.

Plea ordered for Meh. 9th, 1914.

C. M. Hough, D. J.

N. Y., March 2, 1914.

47 *Order sustaining demurrers to 6th count of the indictment.*

At a stated term of the District Court of the United States held in and for the Southern District of New York, at the Federal courthouse, borough of Manhattan, city of New York, on the 30th day of March, 1914.

Present: Hon. Charles M. Hough, judge.

UNITED STATES OF AMERICA, COM- plainant, <i>against</i> HERMAN A. SALEN.	}	Indictment No. 2342. Violation of subsection 6 of section 28 of act of Congress of August 5, 1909. Filed December 1, 1913.
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The above-stated case having come on to be heard upon the above-stated indictment, and the demurrers filed by the defendant, Herman A. Salen, to each of the six counts thereof, and the same having been argued by counsel, it is upon due consideration.

Considered adjudged and ordered by the court that the demurrers of the defendant to the sixth count of said indictment be, and the same are hereby, sustained, and the defendant Herman A. Salen is not required to answer the same. And the demurrers of the defendant to each of the first five counts of the said indictment are overruled, with leave to defendant to move for a bill of particulars as indicated in the opinion filed by the court.

The defendant is required to plead over to said first five counts of the said indictment on or before April 6, 1914, unless in the meantime the time for pleading is extended.

C. M. HOUGH, *D. J.*

We hereby approve the form of above order.

Dated March 30, 1914.

H. SNOWDEN MARSHALL.

U. S. Attorney.

48 ERWIN, FRIED & CZAKI,
Attys. for Defendant.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Mar. 30, 1914.

49 *Assignment of errors.*

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF, PLAINTIFF IN

error,

against

HERMAN A. SALEN, DEFENDANT.

} Assignment of
errors.

The United States of America, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers occurred in the decision of the court herein, sustaining defendant's demurrer to the sixth count of the indictment herein:

1. The court erred in sustaining the demurrer to the sixth count of the indictment herein.

2. The court erred in not overruling the demurrer to the sixth count of the indictment herein.

3. The court erred in holding as a matter of law that the allegations of the sixth count of the indictment herein were insufficient in law.

And the United States, aforesaid plaintiff in error, prays that the order entered and filed herein, sustaining defendant's demurrer to the sixth count of the indictment herein, for the errors aforesaid and other errors in the record and proceedings herein, may be reversed, and altogether held for nothing, and that the plaintiff in error may be restored to all things which it has lost by reason of said order, and that the District Court of the United States for the Southern District of New York, be directed to vacate and set aside such order, and to compel the defendant in error to plead to the indictment herein.

Dated New York, April 27th, 1914.

H. SNOWDEN MARSHALL.

United States Attorney for the Southern District of New York,

Attorney for Plaintiff in Error.

(Endorsed:) U. S. District Court, S. D. of N. Y. Filed Apr. 28, 1914.

By the Honorable Charles M. Hough, one of the justices of the District Court of the United States for the Southern District of New York, in the Second Circuit.

To Herman A. Salen, greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court to be holden in the city of Washington, in the District of Columbia, on the 28th day of May, 1914, pursuant to a writ of error filed in the clerk's office of the United States District Court for the Southern District of New York, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the city of New York, in the district and circuit above named, this 28th day of April, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-eighth.

C. M. HOUGH,

*Judge of the District Court of the United States for the
Southern District of New York, in the Second Circuit.*

52 (Indorsed:) Due service of a copy of the within is hereby admitted. New York, Apr. 29, 1914. Attys. for defendants, U. S. District Court, S. D. of N. Y. Filed Apr. 29, 1914.

53 (Indorsement on cover:) File No. 24,247. S. New York, D. C. U. S. Term No. 506. The United States, plaintiff in error, *vs.* Herman A. Salen. Filed May 29th, 1914. File No. 24,247.

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U. S. DEPT. OF JUSTICE

NOV 12 1913

JAMES D. WALKER

506

No. 1000

In the Supreme Court of the United States

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR.

HERMAN A. SALEN.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

MOTION OF THE UNITED STATES TO ADVANCE.

Printed by the Government Printing Office, Washington, D.C.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN	} No. 1096.
error,	
v.	
HERMAN A. SALEN.	

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.*

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and, in accordance with the provisions of the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, moves the court to advance this cause for hearing on a day convenient to the court during the next term.

This was a prosecution for making false statements in certain declarations required of importers by the Tariff Act of August 5, 1909, 36 Stat. 11, 93, in violation of subsection 6 of section 28 of said act, 36 Stat. 95.

The indictment contains six counts. The first five counts charge the defendant with having made false statements at various times and set out with par-

ticularity the different declarations in which such statements were made.

The sixth count, after setting out the declaration on which the first count is based, charges the defendant with a violation of subsection 6 in this, that in the declaration therein particularly set out the defendant declared that nothing had been on his part, or to his knowledge on the part of any other person, concealed or suppressed whereby the United States might be defrauded of any part of the duty due on the merchandise referred to by said declaration, when he knew and believed that during a period of eight years theretofore the owners of the merchandise had been exporting goods from France to the defendant, upon which values had been placed that were below the prices at which the said merchandise was to be sold, and that at the time of making the said declaration defendant knew and believed that he would also receive a list or statement of the prices at which the merchandise referred to in said declaration had been or would be sold in the United States, but which fact he suppressed and concealed for the purpose and with the intent of preventing an inquiry into the correctness of the invoice referred to in the declaration and the reappraisement of the merchandise covered thereby.

The defendant demurred to each count of the indictment. The demurrers were overruled as to the first five counts, but sustained as to the sixth count.

The question is, therefore, whether the facts alleged in said count constitute a violation of the

act, and the construction of the same is thus brought in issue.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

JUNE, 1914.

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